In the

SUPREME COURT OF THE UNITED STATES

October Term, 1968

No. [redacted] 19

UNIVERSAL INTERPRETIVE SHUTTLE CORPORATION,

Petitioner

v.

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION, ET AL.,

Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

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CASES CITED

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MISCELLANEOUS

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Universal Interpretive Shuttle Corporation ("Universal") has filed with this Court a Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit to review a final decision reversing an order of the United States District Court for the District of Columbia ("District Court"), which held that Universal could operate a for-hire transportation service on the Mall in the District of Columbia without a certificate of public conven-

ience and necessity issued by the Washington Metropolitan Area Transit Commission ("Commission") authorizing such transportation because such service is not transportation under the Washington Metropolitan Area Transit Regulation Compact ("Compact") as it is to be provided by the Secretary of the Interior. The District of Columbia Court of Appeals held that the various relevant laws, especially in view of the location of the Mall in the Metropolitan area of the District of Columbia, did not afford authority to Universal to engage in transportation for hire without a certificate of public convenience and necessity from the Commission.

The United States, by the Department of Justice, has filed a Memorandum as Amicus Curiae. This brief in opposition is submitted to both the petition and the brief amicus curiae.

QUESTIONS PRESENTED FOR REVIEW

1. Is the Transportation Service To Be Provided by Universal "transportation" Under the Compact?

2. Is the Transportation Service "by the Federal Government", and Therefore Exempt From the Provisions of the Compact?

STATEMENT OF THE CASE

The proceedings in the courts below stem from an action instituted in the District Court by the Commission for an injunction and for declaratory relief to enjoin Universal from engaging in the transportation of passengers for hire in the Mall area of the District of Columbia, unless and until such transportation is authorized by a certificate of public convenience and necessity issued by the Commission.

The Commission is an instrumentality of the District of Columbia, the State of Maryland, and the Commonwealth of Virginia, created by an interstate compact, the Washington Metropolitan Area Transit Regulation Compact ("Compact"), between the aforementioned political jurisdictions. The Congress of the United States gave its approval to the

District of Columbia to enter into such compact and consented thereto by Public Law 86-794, September 15, 1960, 74 Stat. 1031 (D.C. Code 1 - § 1410, 1961 Ed.), as amended. The purpose of the Compact was to create in one agency the regulations of the transportation of persons for hire in the Washington Metropolitan area, which was recognized by Congress as a single unified urban community. The Compact became effective March 22, 1961.

In the Fall of 1966, the Secretary of the Interior ("Secretary") instituted, on an experimental basis, a so-called "interpretive shuttle service" to transport passengers through the Mall area of the District of Columbia along the various points of interest. Subsequently, the Secretary issued a prospectus soliciting proposals from various private interests to provide a similar service.

Universal, a California corporation, was selected to be the recipient of a contract to provide the service; the contract was thereupon negotiated between Universal and the Secretary, acting through his Director of National Parks.

Under the terms of the contract, Universal, called a concessionaire, is required to operate a transportation service along routes requested by the Park Service throughout the Mall area. It is further required to provide guides to give a narration to the passengers as the vehicles are in route. Additionally, Universal must station guides at designated points of interest throughout the Mall area. While there is no charge for the latter service, visitors utilizing the transportation service must pay Universal a fee for his guided transportation ride.

Washington Sightseeing Tours, Inc., Blue Lines, Inc., White House Sightseeing Corporation, and D. C. Transit System, Inc., intervened as parties-plaintiffs.

The United States was granted leave to file a representation of interest, to present evidence, file briefs, and otherwise take part in the proceeding.

The Commission's motion for preliminary injunction was consolidated with a hearing on the merits pursuant to Rule 65(a)(2) of the Federal Rules of Civil Procedure. The consolidated hearing was conducted on April 25 and 26, 1967.

The claims of the various parties in the District Court and the court of appeals may be succinctly summarized:

(a) *Commission.* The Commission asserted that the case was governed by the terms of the Compact; that the transportation service to be provided by Universal was transportation as that term is used in the Compact and that, therefore, Universal was subject to the provisions of the Compact, unless it could be shown that the transportation fell within one of the exemptions provided therein or unless some other statutory provisions removed the transportation service from the terms and applicability of the Compact. It further asserted that the National Park areas of the District of Columbia are within the geographical area under which the Commission has jurisdiction. Further, that the transportation operations of Universal are not exempt by the terms of the Compact nor by any other statutory enactments of Congress; and that Universal may not engage in transportation for hire within the Metropolitan District unless and until that transportation service is authorized by a certificate of public convenience and necessity.

(b) *Certificated Carriers.* The intervenors adopted the Commission argument. D. C. Transit additionally asserted that the proposed service by Universal constitutes transportation of persons for hire on a scheduled service over a fixed route which will traverse portions of D. C. Transit's regular routes; that such services are derogatory of the protection afforded it not only by the Compact, but by the franchise granted to Transit by Congress, 70 Stat. 598 (September 8, 1956). All of the intervenors further adopted the principle that they would suffer a possible loss of revenue as a result of the proposed service. The Commission disavowed acceptance or reliance upon, for purposes of this suit, the economic injury or impairment of the Congressional franchise ar-

guments, stating that these were matters which properly should be laid before it in a certificate-application proceeding.

(c) *Universal.* The primary argument raised by Universal was that it would not be engaged in "transportation" as that term is used in the Compact. It took the further position that in the event its transportation services would come within the purview of the Act, the transportation service was exempt because it was "by the Federal government". (Section 1(a)(2), Article XII)

(d) *The United States.* The Department of Justice represented that since the transportation service of Universal would be provided as a concessionaire to the National Park Service, the transportation was by the Federal government and therefore exempt from the jurisdiction of the Commission.

The District Court below found that the transportation services of Universal were not transportation under the Compact and accordingly Universal was not subject to the Commission's jurisdiction. Moreover, obiter dictum, it stated that even if the transportation were subject to the provisions of the Compact, such transportation was "by the Federal government", and therefore exempt from Commission jurisdiction.

The petition for an injunction and for declaratory relief was denied.

Thereafter the Commission and the intervenors appealed to the District of Columbia Court of Appeals.

The court of appeals reversed. From the institution of the suit through the decision by the court of appeals, all parties had cooperated to expedite the proceeding in order that a final determination would be reached before the commencement of the summer sightseeing season. Responding to this sense of urgency, the court of appeals announced its decision in salient terms, without elaborating opinions.

Universal's petition for a rehearing *en banc* was denied by the court sitting *en banc*.

ARGUMENT

I

Petitioners Urge an Improper and Incorrect Interpretation of the Statutes Involved

There were three salient questions resolved by the court of appeals. First, that the transportation service of Universal came within the meaning of the Compact. Secondly, no provision in the Compact exempts that transportation service from the Commission's jurisdiction. Thirdly, the transtation service is not removed from the Commission's jurisdiction by any other Congressional law.

This case involves a straightforward matter of statutory interpretation. There is, on the one hand, the Compact which contains broad language conferring plenary powers on the Commission over transportation for hire in the Metropolitan District. There are, on the other hand, a range of statutes which confer certain plenary jurisdiction upon the Secretary over the administration of the National Park System. It is the Commission's position that this case involves acts of Congress of equal dignity and importance. The opinion of the court of appeals holds that each must be read to form a harmonious whole. Universal prefers to turn the Compact into an attempt at usurpation of federal power by the states and thereby deprive it of its status as an act of Congress.

Ignoring the fact that one of the signatories was the District of Columbia, beyond question a creature of the Federal Government, and further ignoring that Congress carefully reviewed the entire terms of the Compact and passed a specific act authorizing its creature, the District Goverment, to enter into it, Universal and the Government argue that other Federal statutes, concerning the Secretary's powers, must alone be considered as determining the question at issue. The provisions of the Compact supposedly cannot impinge upon these statutory provisions. This is a wholly unacceptable point of view. The Compact must be

regarded as reflecting the will of Congress, just as any other Congressional enactment does.

We can turn now to the language of these Acts. There is nothing in the statutes spelling out the Secretary's powers which specifically deals with the provisions of the Compact. The real question is: what is the relationship between those powers of the Secretary and the powers conferred upon the Commission? The language of the Compact, and its legislative history, provide an answer to that question. The Compact specifically preserves the "normal and ordinary police powers . . . of the Director of the National Park Service with respect to the regulation of vehicles, control of traffic and use of streets, highways, and other vehicular facilities." Compact, Article XII, Section 3.

Does this confer upon the Secretary the exclusive jurisdiction he claims in this proceeding? It would seem not. The Secretary specifically requested that this language be changed to reflect the broader powers he claims and Congress did not act upon his request. Universal tries to brush this fact aside as being at least as consistent with its position as with the Commission's. This attempt to avoid the damaging legislative history is woefully weak.

First, it ignores the fact that Congress had enacted the exemption now claimed by the Secretary in the Interstate Commerce Act, an act which controlled the Commission's predecessor regulator of interstate transportation in the Metropolitan District.[2] Yet, it did not carry that exemption forward into the Compact. Secondly, it ignores the established and unquestioned powers of another of the Commission's predecessor regulators. It is asserted by Universal that the D. C. Public Service Commission never claimed jurisdiction over public transportation in the National Park areas of the District. This was not so prior to the Compact and is not so today. The D. C. Public Service Commission has always set fares and regulated practices for taxicabs (and for buses, when it regulated them) which operate in National Park areas. The Mall area is included on the D. C.

tain any specific language concerning the Commission's powers. The Compact, on the other hand, does deal with the Secretary's powers. The language used, and its legislative history, does not support the Secretary's claim of exclusive jurisdiction. Nor is this claim supported by the practices of the Commission's predecessor as regulator of public transportation in the District of Columbia. In these circumstances, the preferable way in which to resolve the question of statutory interpretation is the way suggested by the Commission and adopted by the court of appeals. Dual jurisdiction exists. The Secretary may exercise the powers conferred upon him, but his concessionaire must also comply with the provisions of the Compact. Any possible conflicts arising from this dual jurisdiction will be avoided by the exercise of understanding by each government agency involved and comity, with the courts available to arbitrate any irreconcilable disputes. In this way, the Commission will not be completely excluded while a major unit is added to the system of public transportation in the area in which it is directed to achieve a rational, coordinated public transportation system serving the needs of all.

The United States contends that it was error for the Court of Appeals to declare that the Mall area is within the geographical jurisdiction of the Commission (Memorandum, p. 9), although it admits that "[t]echnically, of course, the national park areas in question are within the Metropolitan District. . ." This assertion criticizes the Court for giving a "literal" application to the language of the Compact. This is impertinent sophistry, for the Court of Appeals stated that it considered the various relevant statutory words as "construed in relation one to the other." It was, obviously, seeking an interpretation of various acts of Congress which would provide a harmonious result.

Contrary to the assertions of Universal and the United States, the Congress considered the role of the Secretary in the transportation field. The legislation proposed that the Secretary (and the states) would continue to exercise "ordi-

nary and normal police powers"—an area separate and distinct from "economic" regulation.

The Secretary of the Interior objected to the language in the proposed consent legislation restricting his jurisdiction over transportation in the metropolitan area to "normal and ordinary police powers." In his letter the Secretary stated as follows:

> The proviso beginning on line 5, page 51, purports to save the ordinary police powers of the signatories and the Director of the National Park Service with respect to the regulation of vehicles, control of traffic, and care of street, highway, and other vehicular facilities. Since "police powers" is not a term descriptive of the authority and responsibilities of the Director of the National Park Service, we recommend the following clarifying amendments'
>
> On page 51, lines 8 and 9, delete "and of the Director of the National Park Service."
>
> On page 51, line 11, after the colon insert "Provided further, That nothing in this Act or in the compact shall affect the authority and responsibility of the Secretary of the Interior pursuant to section 3 of the Act of August 25, 1916 (39 Stat. 535), as amended, and other Acts of Congress controlling the development and use of national parks, monuments, and reservations comprising the National Park System."

House Report No. 1621, accompanied H.J. Res. 402, 86 Cong. 1st Sess. May 18, 1960.

The recommending clarifying amendments were rejected by the Congress.

II

Universal's Service Is Within the Meaning of the Compact and Therefore the Ambit of the Commission's Jurisdiction

A

Universal's Service Is Transportation

Section 1(a) of Article XII of the Compact states:

> This Act shall apply to the *transportation* for hire by any carrier of persons between any points in the Metropolitan District and to the persons engaged in rendering or performing such transportation service, except. . . (Emphasis supplied)

1. The language of Section 1(a) is clear and unambiguous. Nevertheless, Universal argues that the term transportation as used in Section 1(a) means "mass transit", and does not apply to all other forms of transportation, including contract, charter, sightseeing and other forms of special operations. Such a determination must be made to support such reasoning. To make such a determination is to ignore that:

(a) Previous regulation by the Commission's predecessor agencies included such forms of transportation. Indeed, as conceded by Universal and the United States before the courts below, the District of Columbia Public Service Commission still has jurisdiction to regulate taxicab fares in the Mall area. It must follow then that it had jurisdiction to regulate bus fares in the Mall area. Since the jurisdiction of the District of Columbia Public Service Commission to regulate bus fares was transferred by the Compact to the Commission, the latter thus has jurisdiction to regulate the transportation of Universal.

(b) The administrative practice of the Commission has included regulation of such forms of transportation.[1]

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[1] See certificates of public convenience and necessity attached to WMATC Exhibit No. 3.

(c) And the District of Columbia court of appeals and the United States Court of Appeals for the Fourth Circuit have recognized the Commission's jurisdiction over such non-mass transit forms of transportation. The District of Columbia court of appeals said in *Bartsch v. WMATC*, 344 F.2d 201, 120 U.S.App.D.C. 107, (1965), that "[t]he Transit Commission, by virtue of a Compact entered into among Virginia, Maryland, and the District of Columbia, has broad jurisdiction over commercial transportation carried on in the Washington area. . ."

Further, in *D. C. Transit v. WMATC*, ____ U.S.App.D.C. ____, 376 F.2d 765, (March 7, 1967), Judge McGowan wrote:

> When Congress consented to the Compact in 1960, it elected to treat the Metropolitan area of Washington as a geographical unit, with the Commission as the central licensing and rate-making authority. No one could engage in the transportation covered by the Compact except upon its terms; and these included the issuance by the Commission of a certificate of public convenience and necessity.

Obviously, the term "transportation" cannot be so narrowly construed as to mean only "mass transit or commuter service," but must be given its normal and ordinary meaning, which would embrace all forms of transportation, whether regular or irregular route, mass transit or special, charter, and pleasure tours. Moreover, such a construction is consistent with Congress' mandate that "[i]n accordance with the ordinary rules for construction of interstate compacts, this compact shall be liberally construed to eliminate the evils described therein and to effectuate the purposes thereof." Article XI, Compact. "The Act (Interstate Commerce) is remedial and to be construed liberally." *Piedmont & Northern Ry. v. Commission*, 286 U.S. 299, 311. See further, *Tcherepnin v. Knight*, 88 S.Ct. 548, 553.

Furthermore, the basic function that Universal is to perform is the movement of people in vehicles between points

in and around the Mall area. That the transportation is to be supplemented by a lecture or "interpretation" of the Mall area does not change the transportation service or mean that transportation is not to be rendered.

Universal's theory, if adopted, will undermine the regulatory scheme adopted by the legislatures, and turn the transportation field into absolute chaos. Its adoption means that any government agency can install a new transportation service in the Metropolitan District by the stroke of a pen. This is not an idle thing. Extensive service is now being rendered for various Federal and State agencies by private carriers, subject to Commission jurisdiction.

This service forms an intricate part of the transportation picture in the Washington Metropolitan area which is under a comprehensive scheme of regulation by the Commission. The "single agency" concept of regulation would thus be torn to shreds and a second regulatory agency placed into the transportation field. The political boundaries between the states which were discarded by the enactment of the Compact would be planted around property owned by the Federal government. While the Commission is charged with the alleviation of traffic congestion (Article II), the very heart of the area would be taken out of its hands, and henceforth any service operated in or through the Mall area deemed to be required by the public convenience and necessity would be subject only to the "sufference" of the Secretary of Interior. This is contrary to the legislative declaration of Congress that the metropolitan area of Washington should be treated as a geographical unit, with the Commission as the central licensing and rate-making authority.

The Federal enclave in the District of Columbia *is not an isolated area* such as Yellowstone National Park. The court of appeals stressed this fact. It is submitted that Congress recognized this, by refusing to alter its consent legislation as requested by the Secretary (see supra, pp. 16, 17), not excluding such areas from the defined geographical area of jurisdiction of the Commission, by eliminating the exemp-

tion that exists in the Interstate Commerce Act, and by declaring that the Metropolitan Washington area is a single, unified urban community.

2. The legislative history of the Act is directly contrary to the assertions and conclusions of Universal and the United States.

The House Committee on the Judiciary, Sub Committee No. 3 held extensive hearings concerning the proposed Compact. One of the prime architects, Jerome Alper, Esquire, prepared for the National Planning Committee a comprehensive report on "Transit Regulations for the Metropolitan Area of Washington, D. C." In that report he pointed out what the jurisdiction of the Transit Commission would be under the act. In part he stated:

> "This commission would have *exclusive jurisdiction* over the movement of passengers for a charge between *any* points in the district by motor carrier or street railway. Both contract and common carriers performing such transportation would also be subject to the jurisdiction of the compact commission.***Sightseeing or charter service within the metropolitan district performed by a carrier engaged in transportation subject to the compact law would also be subject to the jurisdiction of the compact commission.* School buses and motor carriers operated by the federal government, the signatory States, or any political subdivision thereof, and any transportation by water would be exempt from the jurisdiction of the compact commission. Taxicabs would be subject to the jurisdiction of the compact commission only for interstate rate-making purposes. (Emphasis supplied)

See Hearings before Sub Committee No. 3 of the Commission on the Judiciary House of Representatives, Eighty-Sixth Congress, First Session. . ., p. 81.

Petitioners claim that the primary purpose of its service will be to interpret the national shrine, and transporting twelve million – *twelve million* – people is only an inciden-

tal thing. Accordingly, a fleet of buses to handle such a mass must be put on the streets within the very heart of the city. Yet, it is contended that the Commission is concerned by law only with a municipal problem. Such a parochial problem, it is said, must not be concerned with the movement of twelve million people within the very heart of this "unified, urban city". Such a movement is not "transportation"?

Moreover, interestingly, there will be no charge to the public for the guide service and other ancillary services – only for the "incidental" service of *moving* people by buses.

B

Universal Is the Person Who Will Engage in and Perform the Transportation Service – Not the Federal Government

Article XII, Section 1(a) states that the Compact shall apply to the "transportation for hire *by* any carrier of persons between any points in the metropolitan district and to the *persons engaged in* rendering or performing such transportation service" except, inter alia, "transportation by the Federal government, the signatories hereto, or any political subdivision thereof." (Emphasis supplied)

It is submitted that there is no precedent extant for the proposition that a carrier of persons pursuant to a contract with the Government is thus considered to be performing transportation by the Government. Indeed, the contrary position has been taken both by the Interstate Commerce Commission and the Federal Courts.

The Interstate Commerce Commission has consistently held that a carrier performing transportation service under contract with the Federal Government must, nevertheless, be the holder of a valid certificate of public convenience and necessity issued by the Commission. In the case of *A. B. & W. Transit Company Extension of Operations – Washington National Airport*, 30 M.C.C. 618, a carrier pro-

viding service to Washington National Airport under contract with the Administrator of Civil Aeronautics nevertheless applied for a certificate of public convenience and necessity from the Interstate Commerce Commission. In *A. B. & W Transit Company Ext. – Dulles International Airport*, 88 M.C.C. 175, the determination there involved the rendition of common carrier service to Dulles Airport. The administrator of the Federal Aviation Agency intervened to request that any certificates granted be conditioned on observance of its rules, regulations and requirements. He conceded however, that section 206(a)(1) of the Act made it mandatory that the carrier with which it might contract for the proposed service must hold certificates of public convenience and necessity issued by the Commission.

Likewise, this same issue was raised by a defendant common carrier in *U.S.A.C. Transport, Inc. v. United States*, 203 F.2d 878. (10th Cir. 1953), cert. denied, 345 U.S. 997 (1953). That carrier attempted to avoid criminal prosecution by alleging as one of its defenses that it was providing transportation for the U.S. Government and, therefore, a certificate of public convenience and necessity was not required. The Tenth Circuit Court of Appeals rejected that defense stating at pages 878-79:

> "The defense that the required certificate is not necessary where a common carrier transports property for the United States Government is not well taken. Section 306 of the Act provides that it is a violation for a common carrier to engage in interstate commerce on the public highways without possessing a certificate of public convenience and necessity from the Commission. A common carrier transporting goods for the United States Government for hire from one state to another is still a common carrier, engaged in interstate transportation, to the same extent as when thus transporting goods for a private individual. *Of course, if the Government itself transports* its own goods, it need not have the required certificate because it is not subject to the provisions

> of its own laws. That is the principle laid down in *Dollar Savings Bank v. United States*, 19 Wall. 227, 86 U.S. 227; 22 L.Ed. 80 and *United States v. Knight*, 14 Pet. 301, 39 U.S. 301 [Reprint 251], 10 L.Ed. 465, upon which appellant relies. But these decisions do not support the contention that a common carrier, carrying goods in interstate commerce, under contract with the Government, need not comply with the law with respect to the possession of the required certificate. The only case which seems to have passed upon the question is *United States v. Schupper Motor Lines*, D.C. 77 F.Supp. 737. It held squarely that a certificate of convenience and necessity was required by a common carrier carrying goods in interstate commerce for the Government. It is also worthy of note that Sub-section (b) of Section 303, 49 U.S.C.A., which sets out specifically and in detail the vehicles exempted from the operation of the act, makes no reference to vehicles by common carriers while engaged in transporting goods for the Government." (Emphasis supplied)

Thus, *Dollar* lays down the principle of "transportation by the government."

There is nothing in the legislative history of the Compact which alters the doctrine that a common carrier performing service for the government under contract must nevertheless be certified by the appropriate regulatory agency.

If the mere existence of a contract between a carrier and a signatory is sufficient to exempt the transportation service from regulation by the Commission, the result could conceivably cause irreparable damage to the true purpose of the Compact. The States of Maryland Virginia, for example, would thus be free to contract for any transportation anywhere within the Washington Metropolitan area simply by engaging the services of a carrier under contract. The counties and cities could embark upon their own transportation ventures, including *regular route operations*, both outside and within their political boundaries. The large number of Federal Agencies who ordinarily issue contracts

involving transportation could do so with carriers who would not be required to submit themselves to the uniform regulations of the Commission. The Commission therefore, would be faced with the spectre of attempting to regulate public transportation while competing, unregulated carriers are utilizing the same streets. The result would mean total defeat of the uniform system of transportation envisioned by the enactment of the Compact. It was precisely to avoid this narrow, parochial approach and to regulate transportation on an area-wide basis that the Compact was created.

The experimental operation by the Secretary in the fall of 1966, performed in his own vehicles and operated by his own personnel, is an example of transportation by the government, and meets the *Dollar* principle.

Here, however, the facts are further from *Dollar* than those in *U.S.A.C.*, for there the carrier was performing his services *for* the government. Here Universal is performing its service for the general public. Its voluntary acquiesence to the supervision of the Secretary – for a valuable concession privilege – does not alter the character of the service, which is that of a common carrier engaged in transporting the public for hire. The evidence clearly reveals that the service will be in Universal's vehicles, operated by Universal's employees, for a fare collected by Universal.

It should be noted that the contract between Universal and the Secretary states, as follows on page 1:

> "Whereas, the United States has not provided such necessary facilities and services and desires the Concessioner to establish and operate the same at reasonable rates under the supervision and regulation of the Secretary; . . ."

This demonstrates the unsoundness of the argument by disclosing that even its evidence fails to support such a rationale, for it is apparent that Universal is to "establish and operate" the transportation. The principal case relied upon by Universal is just not in point, for in *Yearsley v. W.A. Ross Construction Co.*, 309 U.S. 18 (1940) the con-

tractor was performing his service for the government. The principle enunciated therein dealt solely with an agency question arising from a suit for damages to a third party. It has no application here.

The broad application urged to be given the exemption proviso is contrary to the well-accepted principle stated in *Piedmont and Northern Ry. v. Commission*, supra, 311:

> "As the Act is remedial and to be construed liberally, the proviso defining exemptions is to be read in harmony with the purpose of the measure and held to extend only to carriers plainly within its terms."

C

Universal Improperly and Erroneously Claims That Its Transportation Will Not Be Between Any Points in the Metropolitan District

Universal contends that its service will not be operated "between any points" (Article XII, Sec. 1(a), but only from and to one point; therefore, its transportation is not within the ambit of the jurisdiction of the Commission. It then asserts that "this very significant fact" was overlooked by the Court of Appeals.

In the first place, counsel for the Commission is unable to find any reference to such a contention in Universal's brief to the Court of Appeals. Hence, it may not raise the point before this Court.

Moreover, the argument is absurd. The contract lists numerous points at which its service will touch in order that the history and other items of interest may be discussed.

Nor does the law say that "between any points" means two or more separate and distinct points. The movement between origin and destination constitutes transportation between points, whether the physical location of the two are at the same or different geographical locations.

III

The D. C. Transit Franchise Is Not Involved Herein

The Court of Appeals did not discuss the contention of D.C. Transit, that its Congressional Franchise protects it from competition above and beyond the provisions of the Compact.

The Commission wishes to make it clear, as it did below, that it neither endorses nor rejects D. C. Transit's position. Accordingly, it offers no argument on this point.

CONCLUSION

The entire theme underlying the argument of the United States is the theoretical National-city cleavage between the Mall as a national shrine and the Mall as a part of the City of Washington. It presupposes that only a Cabinet officer can protect the former and that a state regulatory commission should not aspire beyond the latter.

Congress felt no such fear, nor did it adopt the cleavage concept. The converse is true. The evils Congress was trying to cure – i.e., the elimination of the fragmentation of the Washington metropolitan city, occasioned by the various political divisions – could not be cured by excluding land owned by the United States.

The inescapable conclusion to be drawn from the peculiar relation between some of the Mall streets and the mass transportation complex in the Metropolitan area is that they are essential to transportation of the public; and it is inconceivable that Congress would exclude them from the jurisdiction of the Commission.

The Compact is not a limitation upon the jurisdiction of the Secretary of the Interior – it merely imposes additional requirements upon a person about to engage in the transportation of persons for hire in the Washington Metropolitan District.

The Court of Appeals' opinion will preserve the dual relationship between the laws of the Compact and the Secretary, for their respective responsibilities are not antagonistic. In fact, accommodation and cooperation are their aim. Regulation by the Commission of a common carrier service performed in whole or in part over streets owned by the Federal government and controlled by an agency thereof does not conflict with the internal control of the facilities by that agency since it retains its jurisdiction to maintain its control. This, in fact, has been the practice for years. Carriers desiring to operate over streets in the Parks area have sought operating authority from the Commission and permits from the Park Service.

Congress has clearly voiced its intent that the transportation to be engaged in by Universal is subject to the provisions of the Compact. Neither Universal nor the United States has shown any substantial reason why the opinion of the Court of Appeals should be reviewed. Moreover, the opinion has honored the intent of Congress.

Quite obviously, the issue is restricted to a local controversy, which has arisen out of the control of the Congress over the Nation's capital and its park areas therein. The problem has no relationship to the national park lands throughout the rest of this country, for nowhere else has Congress been confronted with this uniqueness and in no other legislation has Congress acted to establish the duality of jurisdiction which it obviously intended to establish in Washington, D. C.

The petition for a writ of certiorari should, accordingly, be denied.

Respectfully submitted,

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February 1, 1968